

Salisbury, North Carolina
April 2, 2019

REGULAR MEETING

PRESENT: Mayor Al Heggins Presiding; Mayor Pro Tem David Post; Council Members Karen Alexander and William Brian Miller; City Manager W. Lane Bailey; City Clerk Diane Gilmore, and City Attorney J. Graham Corriher.

ABSENT: Council Member Tamara Sheffield.

Salisbury City Council met in Council Chambers in City Hall located at 217 South Main Street. The meeting was called to order by Mayor Heggins at 6:15 p.m. A moment of silence was taken.

PLEDGE OF ALLEGIANCE

Mayor Heggins led those present in the Pledge of Allegiance to the United States flag.

ALTERATIONS TO THE AGENDA

Mayor Heggins noted the following changes to the Agenda:

Correction – A correction was made to the location of the Ring in Spring event. The event will take place at the Gateway Park located at the corner of East Innes and Depot Streets.

Add – Arbor Day activities and a tree planting will take place during the Hurley Park Spring Celebration Sunday, April 7, 2019 from 2:00 p.m. until 4:00 p.m.

Add – A Resolution supporting a Congestion, Mitigation and Air Quality (CMAQ) application for funds to construct Phase IV of the Grants Creek Greenway from Catawba College to Kelsey Scott Park.

ADOPTION OF THE AGENDA

Thereupon, Mayor Pro Tem Post made a **motion** to adopt the Agenda as presented. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller voted AYE. (4-0)

PROCLAMATIONS

Mayor to proclaim the following observances:

WOMEN'S HISTORY MONTH	MARCH 2019
ADRENAL CANCER AWARENESS MONTH	APRIL 2019
ARBOR DAY	APRIL 7, 2019
FAIR HOUSING MONTH	APRIL 2019
WEEK OF THE YOUNG CHILD	APRIL 7-13, 2019

Mayor Heggins read and presented a copy of the Fair Housing Month Proclamation to Human Relations Director Anne Little, Human Relations Council Chair Dennis Rivers and Board member Liliana Spears.

Mayor Heggins read and presented a copy of the Arbor Day Proclamation to Tree Board members and City Arborist Mark Martin.

Mayor Heggins read and presented a copy of the Adrenal Cancer Awareness Month Proclamation to Ms. Grace Kenrich.

Mayor Heggins read and presented a copy of the Week of the Young Child Proclamation to Ms. Amy Vestal, Ms. Norma Honeycutt, and representatives of Partners in Learning of Rowan County.

Mayor Heggins read and presented the Women's History Month Proclamation to women of the Salisbury Fire and Police Departments, and to Ms. Kimberly Dee Kelsey owner of Noble and Kelsey Funeral Home, Inc.

CONSENT AGENDA

(a) Minutes

Adopt Minutes of the Special Meetings of February 11-12, 2019 and March 19, 2019 and the Regular Meeting of March 19, 2019.

(b) Sole Source Vendor – i-Tech Security and Network Solutions.

Authorize the use of a sole source vendor i-Tech Security and Network Solutions for a City-wide security Camera System. I-Tech was contracted through a bidding process to install

security cameras, their work was found to be excellent and with approval future cameras will be standardized from one source to ensure compatibility.

(c) Supplement Agreement – Greenway Construction of Low Water Bridge

Authorize the City Manager to execute supplemental municipal agreements with the North Carolina Department of Transportation for Project EB-5619, the construction of a bridge connecting Catawba College to the Greenway at Forestdale Drive (Phase A), and the construction of Grants Creek Greenway from Forestdale Drive to Kelsey Scott Park (Phase B). The Phase A agreement is in the amount of \$169,000 and the Phase B agreement is in the amount of \$875,000.

(d) Task Order – McCoy Road Culvert Replacement

Authorize the City manager to execute a task order for \$24,300 with W.K. Dickson & Co., Inc. bringing the total contracted amount not to exceed \$105,020 for engineering services associated with the McCoy Road Culvert Replacement.

Thereupon, Mayor Pro Tem Post made a **motion** to adopt the Consent Agenda as presented. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller voted AYE. (4-0)

PUBLIC COMMENT

Mayor Heggins opened the floor to receive public comments:

Ms. Brooklynne Witherspoon commended the Police Department for its a presence in schools in the area. She asked if Council could encourage the South Carolina School System to have a police presence in their schools. She noted the afterschool program ‘A Bridge 4 Kids’ meets at Hall Gym on Tuesdays and gives children in the area something to do. She added some of the children in the program plan to attend a future Council meeting.

Mr. John Cox addressed Council with a concern regarding Bill 463, and he noted the Bill was recently filed with the North Carolina State Senate relating to the regulation of railroad crews. He expressed his support for the federal mandating of the Positive Train Control (PTC), a piece of equipment that has improved engineer and conductor safety. He requested Council support this Bill by proclamation or resolution and present it to the North Carolina General Assembly.

Mr. Larry Ford shared his concerns regarding a recent article in the *Salisbury Post* relating to the Confederate monument. He encouraged Council to not become involved in issues relating to the Confederate monument.

Mr. C.J. Peters indicated he previously served as a Board member of the Historic Preservation Commission (HPC), and he commended Development Services Specialist Catherine Clifton and Planner Kyle Harris for their service to the HPC. He recognized local youth who

created a record called “Head Full of Melodies,” and he noted the record will be released on April 6, 2019, at the Grievous Gallery. He thanked Council for all it does for the community.

Ms. Mary Edens read portions of a joint statement written by The National Association for the Advancement of Colored People (NAACP), Women for Community Justice, and Salisbury Indivisible. She requested Council consider the removal and relocation of the Confederate monument, and she expressed concerns regarding the recent events related to the monument.

Ms. Nancy Vick stated she supports allowing the Grievous Gallery to serve and sell alcoholic beverages. She expressed her concerns regarding the abundance of security at City Hall.

Mayor Heggins addressed Ms. Vick’s concerns regarding extra security at City Hall, and she noted Council feels it has a responsibility to ensure all participants at Council meetings are safe.

Mr. Mike Martelli expressed his concerns regarding the Confederate monument.

Mayor Heggins addressed Mr. Martelli’s public comment at a previous Council meeting regarding the removal of the Women’s In History Month Proclamation. She explained she was absent at the last Council meeting and she requested the proclamation be held until she returned.

Ms. Cassie Cunningham noted her property’s appraisal value recently increased by 20%, and she asked Council to consider a method called revenue neutral. She added she considered appealing the increased value, but she is concerned the value might increase again.

Mayor Pro Tem Post suggested Ms. Cunningham not be concerned about appealing the appraised value of her property, and he noted her rates would likely not increase due to the appeal.

Councilmember Alexander commented Rowan County performs property evaluations. City Manager Lane Bailey stated he believes Ms. Cunningham is referring to the proposed tax rate and not property evaluations.

Ms. Emily Ford expressed her concerns about the Confederate monument, and she commended Council for adopting a Resolution for Reconciliation. She added the community will continue to act until the Confederate monument is removed and relocated.

Mr. Daquan Coleman shared his beliefs regarding morality in the community. He noted community members should consider how to encourage a positive future for the community.

There being no one else to address Council, Mayor Heggins closed the public comment session.

SPECIAL USE PERMIT SUP-02-2019 – 111 WEST BANK STREET

Mayor Heggins noted when deciding a Special Use Permit (SUP) the City Council follows quasi-judicial hearing procedures. She clarified at a quasi-judicial hearing Council acts as the decision-making body. She noted the purpose of the hearing is to gather evidence as to whether or not this particular application is consistent with the standards set forth in the City's Land Development Ordinance (LDO). She noted Council's task is to consider all of the competent and material evidence presented by the applicant and other parties, to ask questions about and deliberate on that evidence, to make findings of fact based on that evidence, and to apply those findings of fact to the City's LDO.

Mayor Heggins requested those participating in the hearing to come forward and be sworn in. She reminded participants to this is not the public comment period or the type of decision where Council would generally allow and encourage broad public input. She explained Council has the responsibility when making a quasi-judicial decision to ensure the applicant gets a fair hearing by only allowing evidence that is relevant to the issue before Council. She stated in making this decision, Council may not consider opinions, speculative evidence or assertions, generalized objections or concerns, or hypothetical situations. She added the only evidence that Council is allowed to consider is evidence that is competent and material and directly related to the issue of whether the application complies with the standards in the Ordinance.

Ex Parte Disclosure

Mayor Heggins stated Council must consider questions and disclosures, and she added as a matter of basic due process, every applicant is entitled to an impartial decision maker. She asked the following four questions to ensure that the City Council is impartial in this matter. She requested Council members to please respond to the following questions, and answer aloud so the responses can be reflected in the minutes:

Mayor Heggins asked if any member of Council has a fixed opinion on this matter that is not susceptible to change. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller stated No. (4-0)

Mayor Heggins asked if any member of Council had any ex-parte communication about the subject matter of this request with the applicant.

Councilmember Miller stated he asked City Attorney Graham Corriher a question regarding the Ordinance process and the way bars and taverns are viewed. Mr. Corriher indicated he responded to Councilmember Miller's question that the Planning Department is working to find a middle ground for the current Ordinance.

Mayor Heggins noted she has not had any ex-parte communication regarding the subject matter of the request with the applicant.

Councilmember Alexander indicated she received emails from Councilmember Sheffield and Ms. Beth Dixon expressing their support for the Grievous Gallery. Councilmember Miller

added he received an email from Ms. Dixon, but has not received an email from Councilmember Sheffield. Mayor Heggins commented she has not seen the email.

Mayor Pro Tem Post stated he also received those emails along with a couple of others but has not read them because he felt Council should have no bias. He noted he and Councilmember Miller had a brief conversation about not being satisfied with LDO options.

City Attorney Graham Corriher asked Council in lieu of its disclosures if any of the information would affect their ability to make a fair decision tonight. Mayor Heggins and Councilmembers Alexander and Miller stated no. Mayor Pro Tem Post stated he does not agree with the Ordinance or options in place and it would affect his opinion. Mr. Corriher stated as long as he could be impartial and apply the law that exists. Mayor Heggins asked Mayor Pro Tem Post if he could be impartial. Mayor Pro Tem Post commented yes.

Mayor Heggins asked if any member of Council has a close familial, business or other associational relationship with the applicant. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller stated No. (4-0)

Mayor asked if any member of Council has a financial interest in the outcome of this matter. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller stated No. (4-0)

Swearing In

Mayor Heggins convened a public hearing, after due notice thereof, to receive testimony regarding SUP-02-2019.

Mayor Heggins indicated the evidence presented in today's hearing must be based on sworn testimony. She requested that the applicant, any staff member that is going to testify, any other person who is directly and substantially affected by the decision of whether to grant or deny the special use permit and any person with competent and material evidence to present to please come forward and be sworn in. She noted anyone who wished to speak for or against this item must be sworn in, and she asked those who would like to speak to come forward. City Clerk Diane Gilmore administered the oath to the following:

Catherine Clifton
Teresa Barringer
Cheryl Peeler
Michael Young
Will James
Sue McHugh
MaryAnn McCubbins
Elizabeth Rummage
C.J. Peters

Johnny Deadmon
Katelin Rice
Mark Conforti
Davis Cook
Mark Bias
Timothy Demers
Caleb Hill
Alyssa Quick
Elysia Demers

Development Services Coordinator Catherine Clifton explained the case is for SUP-02-2019 for the property located at 111 West Bank Street to permit the sale and on-site consumption of alcohol. She noted in correlation with City Ordinance it would be defined as a bar, tavern, or nightclub if the property is not associated with the use of a restaurant. She clarified a SUP is required for businesses where alcoholic beverages would be sold for on-site consumption that are not included as a part of a larger restaurant. She stated the property is zoned Downtown Mixed-Use (DMX) and is located within the local historic district. She noted the request is in addition to the existing use and the business will continue to operate as normal if the SUP is denied.

Ms. Clifton presented the standards for decision required for the SUP:

1. The use meets all required principles and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
2. The proposal as submitted and approved will be visually and functionally compatible to the surrounding area; and
3. The public health, safety and welfare will be assured and the proposed development will not substantially injure the value of adjoining property and associated uses if located where proposed.

Ms. Clifton stated there are additional use standards for this specific bar, tavern, and nightclub. She explained Neighborhood Mixed-Use (NMX), Commercial Mixed-Use (CMX), DMX, and Highway Business (HB) zonings require that no such facility shall be located within 500 feet of any lot containing a school.

Ms. Clifton stated the LDO defines a school, elementary, or secondary as a public or private institution for education or learning including athletic or recreational facilities, which does not include lodging. She added this institution includes any school licensed by the state and meets state requirements for elementary and secondary education.

Ms. Clifton indicated at Planning Board's February 26, 2019 meeting a discussion was had about the concern of the childcare facility located at First United Methodist Church. She stated staff discussed other uses as defined in the Ordinance relating to early childhood education and related activities, which included religious activities. She clarified religious institution defined the preschool as an accessory use of a religious institution. She noted there are other type uses related to childcare and daycare that are further defined by the size of the student body. She indicated the Planning Board determined the First United Methodist Church Child Development Center does not meet the Ordinance definition of a school relating to state licensure standards. She stated a copy of the Planning Board minutes is included in Council's Agenda packet.

Ms. Clifton noted the proposed zoning site is located in the 100 block of West Bank Street between South Main and South Church Streets. She indicated the property is zoned DMX along its northern, eastern, and southern property boundaries and zoned Historic Residential on its western boundary. She reviewed sitemap and zoning map photographs.

Ms. Clifton stated at Planning Board's February 26 meeting the board voted to recommended approval subject to the proposed conditions:

- On-site alcohol sales and consumption may only occur between 4:00 p.m. and 10:00 p.m. Tuesdays through Saturdays and between 4:00 p.m. and 9:00 p.m. on Sundays. No on-site sales and consumption are permitted on Mondays.
- Consumption of alcohol is prohibited outside the exterior walls of the building.
- Live music is not permitted after 9:00 p.m. Sundays through Thursdays and after 10:00 p.m. on Fridays and Saturdays.
- On-site alcohol sale is limited to beer and wine only.
- Security shall be provided during live music events by licensed security personnel.

Ms. Clifton provided copies of a letter that was presented to staff during the meeting. Mayor Heggins asked if the letter should be considered material evidence and be read into the record. Mr. Corriher commented it is the desire of Council whether to accept the notarized statement as evidence, and he added the rules of evidence of the courts do not apply.

Councilmember Miller commented he believes the letter is from an adjacent property owner, and he suggested the letter would be worthy to be included as appropriate evidence.

Mayor Pro Tem Post suggested waiting until the portion of the hearing to accept the letter as evidence. Mr. Corriher agreed that the letter can be held until the appropriate time.

Ms. Elysia Demers addressed Council as the applicant and co-owner of the Grievous Gallery. She noted it is assumed by some of the surrounding neighbors that approval of the SUP would allow the Grievous Gallery to operate as a full-service bar, and increase intoxicated persons, traffic volumes, and add to the lack of existing parking spaces for residents. She indicated there are concerns regarding serving alcohol near education facilities, and negatively impacting property values and the Empire Hotel project. She indicated the Grievous Gallery was relocated to the larger space to better accommodate the business. She stated the previous building use was for Star Laundry and the property was formally zoned Light Industrial. She added the vacant building would be a proper use for a gallery or art studio adding presence, diversity, artistic use to the area that is considered mostly vacant. She pointed out the Grievous Gallery daily functionality includes breaking glass for therapeutic reasons, self-help classes, first responder support groups, an artist and community event space. She noted the SUP would add another source of income and in no way change the businesses intent or how the business would operate. She asked Council to consider the SUP and how the approval might benefit the business and the community.

Mayor Heggins asked Mr. Corriher if Council can ask the applicant questions regarding the request. Mr. Corriher stated Council may ask questions if the applicant's presentation is completed.

Mayor Pro Tem Post asked if the presentation was complete. Ms. Demers commented a realtor would like to speak regarding property values.

Mayor Heggins asked if the realtor is included with Ms. Demer's presentation. Ms. Demer's stated yes, and she added she also has police reports acknowledging the business is in good standing.

Mr. Corriher asked Ms. Demer's to provide the police reports to City Clerk Diane Gilmore if she wishes them to be included as part of the evidence.

Ms. Cheryl Peeler stated she represents Allen Tate Real Estate as a relocation specialist. She provided testimony regarding property values, information about the areas where patrons travel from to visit the Grievous Gallery, and statistics from the North Carolina Realtors Association. She stated the Rowan County area has begun to show an increase in growth. She indicated Cabarrus County's growth is now moving into the Kannapolis and China Grove areas. She noted there is continuous interest to revitalize the downtown area with projects like the Empire Hotel Project. She added these projects would bring additional revenue and could increase property values. She commented the majority of her clients are searching for a town or city with a home-town feel, and a place to live, work and play. She noted a selling point for Salisbury is that it offers the convenience of walking downtown and host a variety of community events. She commented the Grievous Gallery is known for attracting people from across the United States offering a place of healing for people that have experienced pain or Post Traumatic Stress Disorder (PTSD). She referenced the positive publicity the Grievous Gallery has received for the service it provides to the community.

Councilmember Miller asked for Ms. Peeler's opinion regarding the Grievous Gallery's impact on adjacent property owners. Ms. Peeler stated the business could increase property values and bring more businesses and people into the community.

Councilmember Miller asked Ms. Peeler how many years has she been a realtor. Ms. Peeler stated she has been in the real-estate business for two and a half years.

Councilmember Miller asked Ms. Peeler if she could be considered impartial in the judgment based on the fact that it seems she has been a patron of this business. Ms. Peeler commented yes, and she indicated she has been a patron of the Grievous Gallery. She added in her profession, as a relocation specialist Salisbury can offer what people are looking for, and she added the gallery would be a bonus to the area.

Mayor Heggins asked Councilmember Miller if he could be more specific when he noted the appearance of a connection between the realtor and the Grievous Gallery. Councilmember Miller explained Ms. Peeler stated she used and participated in the business and his comment was based on Ms. Peeler's wording during her presentation. Councilmember Miller pointed out he was not making a judgment but wanted clarification regarding whether or not Ms. Peeler could be impartial when providing her expert opinion. Ms. Peeler stated she could be impartial.

Mayor Pro Tem Post asked if Ms. Peeler is a commercial or residential realtor. Ms. Peeler indicated she is a real-estate broker for residential and commercial properties. Mayor Pro Tem Post asked Ms. Peeler if she is a broker for properties that are leased. Ms. Peeler stated no. Mayor Pro Tem Post then asked if she represents buyers or sellers. Ms. Peeler explained she represents

both parties. Mayor Pro Tem Post asked Ms. Peeler if she has sold any properties in the West Square neighborhood within the past several years. Ms. Peeler stated no. Mayor Pro Tem Post asked Ms. Peeler if she has sold any properties in the downtown area. Ms. Peeler stated no, and she added she does have clients that are interested in these areas.

Mayor Pro Tem Post asked what ages attend the First United Methodist Church Childcare Center. Development Services Coordinator Teresa Barringer stated the children that attend the preschool range in age from two to four years old.

Mayor Pro Tem Post asked for clarification regarding if a preschool could be classified as an elementary school as defined by state statute. Ms. Clifton agreed that that classification was determined by staff, and she added a request was made to the Planning Board to determine whether the preschool could be included in the LDO's definition of a school. She noted staff reviewed Ordinances to determine if there were other definitions that could better classify preschools and daycares which are specifically noted as uses. She stated staff advised the applicant accordingly and Planning Board did debate whether the First United Methodist Church's preschool should be considered a school in comparison with the Ordinance definition.

Mayor Pro Tem Post asked if any members of Council were present at the Planning Board meeting and if Mr. Corriher would be able to provide an opinion. Mr. Corriher indicated he attended, and he stated he did not provide Planning Board members an opinion, but he did review the definition of a school, elementary and secondary school. He stated the definition is not exclusive, and he asked the Planning Board to make a finding within the City's Ordinance. Mayor Pro Tem Post asked if a finding of fact could be classified as a legal opinion regarding whether or not a preschool would be constituted as a school. Mr. Corriher commented the LDO is subjected to interpretations. He noted Council establishes and adopts the rules for LDOs and what was intended by the definition would be considered relevant. He added there is no guidance offered for the definition's meaning or intent. He indicated the LDO was adopted as a part of a standard definition but there is no interpretation of the definition.

Ms. Clifton noted the Land Base Classification Systems (LBCS) is generated by the American Planning Association (APA) that guided most of the definitions adopted into the City's LDO. She stated the LDO basically reads word for word to what the APA indicated on its website. Mayor Pro Tem Post asked what the APA suggest about a preschool being classified as an elementary school. Ms. Clifton commented she did not review daycare specifications in the LBCS standards, but the City's Ordinance follows suite dividing the different uses by classifications. She indicated the proposal would be considered under civil and institutional and a daycare definition was not included with a schools definition.

Ms. Barringer commented she spoke with the daycare director of First United Methodist Church to ensure clarity of code qualifications, which states this institution includes any school licensed by the state and meets state requirements for elementary and secondary education. She stated the daycare director confirmed that under state certification requirements the preschool was not considered a secondary or elementary school. She noted preschool operations are included in childcare center regiments, but as the current code is written and determined by the Planning Board

the preschool would be defined as a separate use. She noted public and private secondary schools would be referenced as separate land use.

Councilmember Alexander asked about the daycare center's hours of operation. Councilmember Miller stated based on the information provided the hours of operation are from 8:00 a.m. until 6:00 p.m.

Mayor Pro Tem Post asked if staff has a copy of the LDO. Ms. Barringer stated yes.

Mayor Pro Tem Post commented the classification of whether or not the daycare could be considered a school should be legal advice, and he asked for Mr. Corriher's opinion as opposed to a factual determination. Mr. Corriher stated Council is considered the fact finder at this time, and he noted the first standard determines whether or not it meets the current Ordinance requirements. He added he thinks everything about the standard meets the Ordinance requirement's because it is a SUP. He noted the only additional condition included with the proposed SUP states it cannot be permitted within 500 foot of any lot containing a school. He noted the Ordinance defines school as an elementary and secondary school.

Councilmember Miller noted the condition is what the current Ordinance requires. He stated if there is an intent to include more than elementary and secondary education at the facility there would be a need for a revision. Mr. Corriher agreed. Councilmember Miller noted the provided Ordinance states how a school has been interpreted by the Planning Board to makes its recommendation to Council. Mr. Corriher agreed.

Mayor Pro Tem post asked if the language is written in the LDO. Mr. Corriher noted religious institution is mentioned because it includes preschools.

Ms. Barringer commented historically SUPs issued since the adoption of the LDO have been through this process, and she added daycares were not classified as schools under the previous reviews. She stated if it is the desire of Council staff can review concerns that relate to the LDO's definition of schools for a possible amendment.

Mayor Heggins noted Council has to proceed with the current LDO. Mr. Corriher commented based on staff recommendations this is the way the LDO has been interpreted in the past and it does not include preschools.

Councilmember Alexander referenced the recent SUP-01-2019 for the property located at 116 West Innes Street. Ms. Barringer noted that SUP was a similar situation, but its primary use was a retail store with on-site consumption as an accessory use. She stated this is the only option that works with current Codes to approve the proposed SUP. Mr. Corriher clarified SUP-01-2019 was not within 500 feet of a school institution because of the facility's location and the way the parcels were divided. Ms. Barringer explained SUP-01-2019 included a daycare facility that was considered a standalone parcel located more than 500 feet from 116 West Innes Street.

Councilmember Miller commented Go Burrito is closer to First United Methodist Church than the Grievous Gallery would be. Ms. Clifton stated that could be true. Councilmember Miller

asked if there is any information regarding how the decision was made to approve Go Burrito's location. Ms. Clifton noted Go Burrito is zoned as restaurant use.

Mr. Michael Young stated he resides at 126 East Innes Street, serves on the Historic Salisbury Foundation, and is chairman of the Historic Preservation Commission. He noted he has been a business owner for 31 years and a former downtown manager. He commented in order for the downtown area to grow it should adapt and change. He expressed his concerns about setting restrictions on a place of business. He noted the committee that organizes the October Tour considered the Grievous Gallery as a location to host its patron party, but because the of the current time restrictions the event would be limited.

Mr. Steve Cobb noted he resides at 623 West Bank Street, and he agreed that there is an issue with the Ordinance relating to its definition of a school. He noted there is a difference between serving alcohol near a school and serving alcohol near children. He asked Council to determine the LDO's definition intentions of not allowing a bar to be located near a school.

**Mr. Steve Cobb did not receive an oath relating to SUP-02-2019 public hearing therefore his statement must be considered unsworn.*

Mr. Will James noted he is a resident within the historic district. He added he supports allowing the proposed facility liquor licenses because he would like to see the law and process followed. He pointed out he was not able to testify during the Planning Board public hearing because he does not have a realtor's license. He stated he has developed approximately 75 residential units in the Denver center business area, and he added property values of homes that are located in closer proximity to a bar can be affected. He read a portion of the minutes from the Planning Boards meeting and referenced section 18 of the Ordinance that defines a school.

Mayor Heggins asked Mr. Corriher if Council is limited to only refer to the definitions provided in the LDO. Mr. Corriher agreed, and he noted Mr. James is referencing a definition provided at the Planning Board meeting and the uses described within the table of uses.

Ms. Sue McHugh indicated she resides in the downtown area, and she stated the Grievous Gallery was awarded the Downtown Salisbury, Inc. Best Innovation Business Award in 2016. She stated the gallery placed third in recent entrepreneurship with the Rowan Idea Center in February and it hosted the North Carolina Community College of Fine Arts Conference reception for instructors and students from across North Carolina serving beer and wine. She noted the Gallery was featured in WBTV morning break segment, WFMY Greensboro 2, WCCB, WCNC, NBC, Spectrum News, and Clean City Weekend, and featured articles in *Salisbury the Magazine* and in the *Salisbury Post*. She noted the businesses primary revenue would be from glass breaking sessions, creating and selling art, and supporting the performing arts community. She noted the SUP request is the same proposal as Lee Street Theatre, Mean Mug Coffee Shop, and the Salisbury Wine Shop. She indicated the church on the opposite side of the property creates on-street parking and traffic issues. She noted the glass breaking offered by the Grievous Gallery is fun entertainment, and she added she supports the permit for the Grievous Gallery.

Ms. MaryAnn McCubbins stated she resides two blocks from the Grievous Gallery and works at First United Methodist Church. She added she likes living in a mixed-use neighborhood. She commented she was a former clinical social worker and the Grievous Gallery's therapeutic modality is spot-on and a useful tool for releasing emotions. She stated she had conversations with the owner regarding spiritual beliefs, and she noted she believes the request for the use of beer and wine would promote the business. She pointed out beer and wine are sold at businesses one block south and north of the childcare center, and she noted those businesses have been a positive impact for the City. She commented the downtown area has parking issues, and she added she supports the SUP.

Ms. Elizabeth Rummage indicated the Grievous Gallery is a place for the community and friends to gather and use glass breaking therapy. She stated the gallery is ran by a couple who cares about the community. She added there are concerns about the Gallery serving alcohol, but facilities are required to abide by the North Carolina Alcohol Beverage Commission's standards.

Mr. C.J. Peters stated he resides at 424 Park Avenue and he supports the Grievous Gallery. He added that he does not believe that the Grievous Gallery selling alcohol would disrupt the neighborhood.

Mr. Johnny Deadmon commented he met owners Tim and Elysia Demers when he made his first visit to the Grievous Gallery. He stated he is a recovering addict and his experience at the gallery has been an inspiration.

Ms. Katelin Rice noted she believes the Grievous Gallery has a positive economic value and influence on the community. She recognized the diversity in the audience, and she asked Council to consider approving the SUP.

Mr. Mark Conforti stated he serves First United Methodist Church as its senior pastor. He stated the conditions offered with the SUP seem reasonable and the Planning Board has taken into account the concerns it received. He noted the church's daycare center is a North Carolina licensed five-star program. He added in August the daycare program will be classified as a pre-k program and it will be a great resource for the community. He indicated the children's safety is the church's first priority. He stated the church celebrates the Grievous Gallery's communal influence.

Mr. Davis Cook commented he has owned the building located on the property of the requested SUP since 1995. He added the City has invested heavily to promote this part of the downtown area through the Municipal Service District (MSD). He commented the Grievous Gallery has operated three years under DMX zoning. He stated he is proud to have the company in his building, and he noted his property values have increased an additional \$100,000 since Grievous Gallery moved in.

Mr. Mark Bias commented his husband is Davis Cook, and he added he supports the Grievous Gallery. He explained the Grievous Gallery's use is fitting for the facility.

Mr. Timothy Demers stated he resides at 820 South Jackson Street and is co-owner of the Grievous Gallery. He noted he previously owned a childcare facility in Myrtle Beach, South

Carolina. He commented he does have concerns about the children, but he is very aware of working in diverse surroundings. He stated he looks forward to working with the church and helping to serve the community.

Mr. Caleb Hill addressed Council regarding the expressed concerns for children who attend the nearby child care center, and he noted the businesses do not operate at the same times. He stated he does not agree with the restrictions that are currently placed on the property.

Ms. Alyssa Quick indicated she is a realtor at Key Real Estate, and she noted the community's real-estate market is not thriving. She added the average square footage of a home in 2018 was \$56 per square foot, average property market listings of 225 days, and median sale price of \$152,000 in 2016. She pointed out the Grievous Gallery was recently renovated and would be an asset to the community.

Ms. Elysia Demers asked about the letter that was presented to Council. Councilmember Miller asked if the letter should be read into the record. Mr. Corriher commented Council has a copy of the letter and it would need to determine whether it wants to accept the letter as evidence. Councilmember Miller stated he would be happy to summarize the letter consumption if Council so desires.

Mayor Heggins asked the applicant if it is her preference that the letter be read into the record. Ms. Demer's stated yes.

Councilmember Miller read a letter written by Jon Crook located at 127 West Bank Street:

"I grew up here in Salisbury, and have recently moved back with my family. Last June I began negotiations to purchase the house at 127 West Bank Street, and finally closed on the property on February 15th of this year. During the months in between, Grievous Gallery became tenants of the property right next door to our new residence. Over the decades, I have become increasingly proud of how our downtown has evolved, and have seen a growing trend toward more vibrant, exciting businesses choosing to set up in the downtown district. This progressive momentum would not have happened without people with vision to promote vitality, both from leaders in the community and in City government. This renewal of energy is part of the reason I wanted to return to Salisbury, and why I wanted to live adjacent to the downtown specifically. When I found out that this amazing business had gone into the building next to the house I wanted to buy, it made me feel even better about purchasing the property. Not only am I not opposed to living right next to Grievous Gallery, but I am thrilled at being so close to such a dynamic place with such good energy! Tim and Elysia Demers are warm, kind, outgoing people, and they have already proven to me to be good neighbors. I look forward to watching their business grow in new and inventive ways now possible in this new location; the building is perfect for them. At issue is whether or not they should be able to serve beer and wine to their customers. I feel strongly that they should be granted this permit, and that it not only apply to the confines of the building itself, but to the whole parcel. The parking lot in between their building and my house would be an ideal place for outdoor seating, food trucks, and other such uses, especially for larger events. I, myself, would love to be able to have a beer when patronizing their establishment, and although beer and wine sales would constitute only a fraction of their business, it would certainly enhance the

relaxing ambience they already have going. Two other nearby businesses, La Cava and Go Burrito are already able to utilize their outdoor areas in this way, and I see no reason Grievous Gallery should be treated any differently. As the neighbor the most affected by this decision, I strongly urge the Council to pass this Special Use Permit without any restrictions that would be different from any other business serving beer and wine in the Downtown Mixed Use district.”

Mayor Pro Tem Post asked if the burden of proof would be for the preponderance of the evidence. Mr. Corriher stated for each finding and as long as the applicants provide a prima facie case they would be entitled to a permit unless Council determines the applicants evidence is outweighed by evidence. Mayor Pro Tem Post asked if he is referring to the 51% standard. Mr. Corriher agreed, and he added the applicant has the initial burden of proving all elements.

Councilmember Miller asked if the majority of Council supports one-way. Mr. Corriher stated Council must identify each finding with a consensus by Council. He stated Council’s decision should be based on sustainable evidence.

Mayor Heggins asked about the additional conditions recommended by the Planning Board. Ms. Clifton commented the conditions were recommended by the Planning Board to make the proposed SUP more conforming with the Ordinance. She stated there are three standards required by the Ordinance, and an additional use standard in regards to the lot occupied by the school. She stated the Planning Board determined if these conditions were applied to the SUP’s request it could then be considered by Council.

Mayor Pro Tem Post stated he is concerned about the conditions that are applied to the land because owner occupancy could change. He stated an ideal situation would be to make revisions to the LDO that might assist with future concerns and request. He noted he has a concern about the LDO’s definition regarding school classifications.

Mayor Heggins agreed that the LDO needs to be reviewed and updated. She added she believes it is unfair to ask the applicants to postpone for Council to approve its request. She noted Councils put things in place to last a long time, but future Councils will make decisions based on what is appropriate at the time.

Ms. Barringer noted if the SUP is approved tonight with any stated conditions those conditions would remain with the land, and she added future applicants will be subject to the same conditions. She clarified if the applicant fails to uphold the conditions set by the SUP, Council has the authority to resend the SUP. Mayor Heggins asked if it is possible to change the conditions of an applicant’s request. Ms. Barringer commented if the applicant presented a change in conditions to Council the request would be considered a new process.

Mayor Pro Tem Post asked if Council has the authority to revoke a SUP if a bar, tavern, or nightclub repeatedly violates conditions. Mr. Corriher agreed, and he added the process is similar to establishing the SUP. Mayor Pro Tem Post asked how many times Council has ever had to revoke a SUP. Mr. Corriher stated to his knowledge none.

Ms. Barringer reviewed the LDO Chapter 15 Section 18 subject ‘F,’ the rescission of SUPs:

1. If such project is not complete and a valid building permit is not in place at the end of the twelve (12) month period, the Administrator shall notify the applicant of either such finding. Within thirty (30) days of said notification, the Administrator shall make a recommendation concerning the rescission of the Special Use Permit to the City Council. The City Council may then rescind the special use, or extend the special use district for a specified period of time.

2. Other criteria for which a Special Use Permit may be rescinded or terminated shall be as follows:

- a. Non-compliance with adopted conditions.
- b. Expressed diminution of value of surrounding properties that may only be found during the evidentiary hearing and made a part of the Findings of Fact.
- c. Expressed negative effects related to the general safety, health, and welfare of the surrounding community, which may only be found during the evidentiary hearing and made a part of the Findings of Fact.
- d. Recorded and repeated Code violations.
- e. Any non-conformity created by amortization of the permitted use, which would only be established as a condition of the permit.
- f. Any zoning map amendment to a zoning district that would create a nonconformity between the district and associated permit.

Councilmember Miller asked if a Code violation by itself would give cause for a SUP to be revoked. Ms. Barringer indicated a Code violation would be considered a standalone cause.

Councilmember Miller suggested there are two options Council could determine at this point. He noted option one would be to agree with the recommendation made by Planning Board. He noted option two would be for Council to determine the proposal is not a fit with its current LDO and request staff to select or create a relevant Ordinance to fit the SUP. He added he believes the applicant will be a good business operator that follows the SUP. He stated the LDO should be revised for long-term purposes, and he pointed out there have been two separate SUP issues recently relating to LDO standards that no longer work for the area.

Councilmember Alexander agreed with Councilmember Miller's suggestion to table the SUP, and she stated she has an issue with the LDO's definition of a school. She suggested creating a new classification for galleries because the requests will continue to come into the community.

Mayor Heggins asked if there would be an issue with Council approving the SUP, and then reviewing and updating the LDO. Councilmember Miller commented the only difference he could see would be the business would be able to operate sooner than later.

Mayor Pro Tem Post commented there could be an issue regarding the next business owner that moves into the facility located at 116 West Bank Street. Mayor Heggins stated she thought that had been addressed through the reading process. Ms. Barringer commented the issue was addressed, and she clarified this is considered to be a stricter process and if the Code is rewritten to make it more acceptable for alcohol to be a secondary use there would be no restrictions and could be permitted by-right. She noted if there was a restriction of consuming alcohol within 500

feet of any church, daycare, or religious institution the condition could remove restaurant businesses within the same proximity because it serves alcohol.

Councilmember Alexander commented she does not agree with a decision being made in perpetuity with the land because of future uses. Ms. Barringer stated future applicants must adhere to conditions.

Councilmember Alexander asked about the proposed hours, and she suggested Council restrict the times that permits alcohol sales until after the daycare center is closed. Ms. Barringer commented it would be Council's desire.

Mayor Heggins pointed out it would be up to the Council to resend a SUP if the next applicants who utilized the property violated the SUP's conditions.

Councilmember Miller commented a draft could be created that included a SUP that would not remain with a property in perpetuity.

Mr. Corriher noted a draft could be written, but he advised Council that it is not appropriate to deliberate that issue at this time.

Mayor Heggins indicated the applicant has completed the process with the current LDO, and she stated she does believe it is fair to ask the applicant to wait.

Councilmember Miller asked if the SUP could be tabled until Council's next meeting, and he pointed out Council could vote by a tie because there are four members present. Mr. Corriher stated a tied vote would mean the SUP does not pass because it is not a majority. He noted Council could vote to table the SUP until its next meeting and the public hearing would remain open.

Councilmember Miller stated he would be willing to vote for the request to review and update the LDO.

Mayor Pro Tem Post asked for clarification regarding the definition of a school. Ms. Barringer commented the definition provided reflects exactly what is written in the LDO. Mayor Pro Tem Post asked Ms. Barringer if she was satisfied that the LDO's definition states in order to be a school as defined by the City's Ordinance it should be licensed by the state as elementary and secondary education. Ms. Barringer commented she cannot provide an opinion, but can only identify what the LDO states. She noted there are specific definitions for childcare that addresses three or more children less than 13 years of age who do not reside at a location. She added there are two definition distinctions for childcare and commercial childcare centers, and the interpretations and staff historic procedures have been that childcare centers were addressed in the LDO as standalone uses. She noted schools are identified in section school, elementary and secondary.

Councilmember Miller asked Mr. Corriher if it would be possible for Council to establish a committee to review the LDO language. Mr. Corriher commented if this is a Council priority staff can place the concern at the top of its list.

Ms. Barringer clarified a text amendment by General Statute requirements would need to go through the legislative process. Councilmember Alexander asked how long the process would take before its return to Council for consideration. Councilmember Miller stated at least 60 days. Ms. Barringer agreed, and she noted it would need to go before the Planning Board for a vote.

Mr. Corriher stated if Council has any legal questions about the proposal it can call for a closed session.

CLOSED SESSION

Thereupon, Councilmember Alexander made a **motion** to go into a closed session for fifteen minutes to consult with an attorney as allowed by NCGS 143-318.11(a)(3). Mayor Heggins, Mayor Pro Tem Post, and Councilmember Alexander voted AYE. Councilmember Miller voted NAY. (3-1)

RETURN TO OPEN SESSION

Thereupon, Mayor Heggins made a **motion** to return to open session. She announced no action was taken during closed session.

City Attorney Graham Corriher summarized Council's closed session discussion, and he stated conversation took place regarding Council's role to determine the factors it must find and its role interpreting the Ordinance. He commented there was a review of Council's role regarding what information it can and cannot consider under quasi-judicial procedures.

Thereupon, Councilmember Miller made a **motion** to table SUP-02-2019 item until its next meeting on Tuesday, April 16, 2019. He noted the hearing would remain open, and he added Council to request additional testimony from an expert witness and to allow its full Council to make a decision at its next meeting.

Mayor Heggins asked if the Planning Board has approved the SUP. Mr. Corriher stated the Planning Board provides recommendations only, and he noted regardless of what the Planning Board recommends the SUP must return to Council. He noted the Planning Board recommended approval of the SUP with conditions.

Mayor Pro Tem Post seconded the motion. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller voted AYE. (4-0)

Councilmember Miller clarified there would not be a time for public testimony at its next meeting.

Mayor Heggins asked what testimonies would be provided. Mr. Corriher stated deliberations would remain open until it is time to vote just in case there are supplemental questions

for the applicant or others. Mayor Heggins asked if the applicants could be asked questions during that time. Mr. Corriher comment yes, and he noted those who testified at this meeting would also be able to speak.

Mayor Heggins asked if Council could bring in an independent appraiser. Mr. Corriher stated real property values should be given by an expert witness. Mayor Heggins asked if the standards indicate who the expert witness should be. Mr. Corriher commented the applicant is responsible for providing an expert witness in order to meet standards. Mayor Heggins asked if it would be appropriate for Council to provide an expert witness. Mr. Corriher commented Council could subpoena witnesses, but it would not be appropriate at this time.

Mr. Corriher commented Council must make a finding that whoever testifies regarding property values is an expert with qualifications that Council decides is an expert.

Mayor Heggins asked for clarification regarding what Council is requesting from the applicants. Councilmember Alexander commented an expert opinion from a realtor who is independent and whom the applicant has never met.

BOARDS AND COMMISSIONS

Human Relations Council

Upon a motion by Councilmember Alexander. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander, and Miller voting AYE, the following appointment was made to the Human Relations Council for a term to begin April 1, 2019:

Mr. Deep Dave

Term Expires 03/31/2022

Fair Housing Committee

Mayor Heggins commented recommendations were made for Mr. George Benson and Ms. Robertson to serve on the Fair Housing Committee, and she noted a tie between the three additional recommendations. She suggested tabling the additional recommendations until there has been a chance for conversation and approving the top two recommendations. Councilmember Alexander asked how many vacant seats needed to be filled. Mayor Heggins stated there are four vacant seats to be filled. Council agreed to table two additional seats until it has had time for consideration.

Upon a motion by Councilmember Miller. Mayor Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller voting AYE, the following appointments were made to the Fair Housing Committee for a term to begin April 1, 2019:

Ms. Ellen Robertson

Term Expires 03/31/2022

Mr. George Benson

Term Expires 03/31/2022

CITY ATTORNEY'S REPORT

(a) Update –First Amendment Ordinance revisions

City Attorney Graham Corriher announced at its next meeting on April 16, 2019 Council will discuss the First Amendment Ordinance. He noted the Council Committee voted for the revisions to be presented to Council at its April 2, 2019 meeting. He indicated Councilmember Tamara Sheffield requested to be included in the discussion.

(b) Update – City's Water Billing Practices

City Attorney Graham Corriher stated Council requested an update regarding the City's water bill practices. He noted City Ordinance requires a \$150 deposit to establish a water service connection, and he added there is an exception in the Ordinance if the property is an owner-occupied residence. He commented the deposit credit remains as long as the customer is within the Salisbury-Rowan Utilities (SRU) service area, and he added if the customer leaves the area the deposit is returned to the customer. He indicated an average water bill is \$70 per month and fees are governed by Chapter 25 of the Ordinance. He noted the City makes an effort to accommodate and help customers with owner/occupant verification such as a deed. He stated if ownership cannot be established the \$150 deposit is then required, and he added the City does not deny services. He commented staff has spoken with other municipalities and determined the City's practice is common.

Mr. Corriher stated the City's billing practices have not been updated since the 1990s, and he commented staff will attend a University of North Carolina School of Government (SOG) training related to water billing practices. He added he will attend the training in May along with Finance Director Shannon Moore and Customer Service Manager Caren Lightfoot. He indicated the goal is to provide the best customer service. He noted revisions could be presented to Council for its consideration by mid-summer.

Councilmember Miller asked if there is a process that provides supervisory guidance to the customer to help seek a resolution without bringing the issue to Council.

City Manager Lane Bailey explained sometimes when citizens come to Council meetings there is confidential information involved that cannot be discussed or shared. He noted another reason an account might be delinquent is that the transfer of property-ownership and any unpaid services would remain with that property. He noted if the property is a rental property service is provided to tenants and not property owners.

Mayor Pro Tem Post asked if customer related issues are decreasing because Fibrant services are no longer included in utility bills. Mr. Bailey commented he believes that could be the case, and he added staff is doing a great job cleaning up delinquent accounts.

Councilmember Miller asked Mr. Corriher if he would provide an update to Council after he and staff attend the SOG training. Mr. Corriher agreed.

CITY MANAGER'S REPORT

(a) CMAQ Grant Fund for Grants Creek Greenway Phase IV

City Engineer Wendy Brindle explained the City has municipal agreements with the North Carolina Department of Transportation (NCDOT) for Greenway funding in the amount of \$1.04 million. She indicated the funding is from the Transportation Alternative Program (TAP), and she noted the City was recently made aware funding is scheduled to resend at the end of the federal fiscal year if funds have not been authorized. She stated staff met with representatives from the Metropolitan Planning Organization (MPO) who are experiencing the same issues with TAP funding. She commented NCDOT is working with the agencies to put projects on a fast track and/or seek funds by other means. She indicated because there is not enough time to authorize the entire project the Grants Creek Greenway Project will be separated by phases for authorization before the end of the federal fiscal year. She commented based on the new bidding atmosphere bids have been submitted with higher amounts than in previous years, and she added the consultant has provided new estimates based on worst-case scenarios and those amounts have been applied to the additional funding.

Ms. Brindle indicated NCDOT has recommended the City and other agencies apply for Congestion Mitigation and Air Quality (CMAQ) Grant funding for projects that are eligible for TAP funding. She noted TAP funding applications remain, but the City will be applying for the project's \$2.8 million total cost through CMAQ funds in case TAP funding resends. She noted the project will be eligible for additional funding. She stated depending on availability of funds some projects could be delayed for a year or two.

Ms. Brindle asked Council to consider adopting a Resolution supporting the application for CMAQ Grant funds for the Grants Creek Greenway Phase IV.

Thereupon, Councilmember Alexander made a **motion** to adopt a Resolution supporting the application for Congestion Mitigation and Air Quality (CMAQ) Grant funds for Grants Creek Greenway Phase IV. Mayor Al Heggins, Mayor Pro Tem Post, and Councilmembers Alexander and Miller voted AYE. (4-0)

A RESOLUTION SUPPORTING THE APPLICATION FOR CMAQ GRANT FUNDS FOR GRANTS CREEK GREENWAY PHASE IV (PART OF THE CAROLINA THREAD TRAIL.

(The above Resolution is recorded in full in Resolution Book No. 16 at Page No. 11, and is known as Resolution 2019-08.)

ANNOUNCEMENTS

Communications Director Linda McElroy announced Downtown Salisbury, Inc. will host Ring in Spring Saturday, April 6, 2019 from 11:00 a.m. until 2:00 p.m. at Gateway Park located

at the corner of East Innes and Depot Streets. A professional photographer will be onsite offering free photos with the Easter Bunny. Enjoy spring crafts, snacks and family fun. For more information please call (704) 637-7814.

Communications Director Linda McElroy announced Salisbury Parks and Recreation and the Hurley Park Advisory Board will host the 32nd annual Hurley Park Spring Celebration Sunday, April 7, 2019 from 2:00 p.m. until 4:00 p.m. at Hurley Park. Enjoy a wide variety of activities including music from the Salisbury Swing Band, The Bubble Circus, free horse and carriage rides, local art, wildlife and nature displays and much more. This event is free and open to the public. For more information, please call (704) 638-4459.

Communications Director Linda McElroy announced Salisbury Parks and Recreation will host its 13th Annual Touch a Truck event Saturday, April 13, 2019 from 10:00 a.m. until 1:00 p.m. in the City Hall parking lot at 217 South Main Street. Participants will have an opportunity to have a hands-on, up close and personal education experience with a wide variety of vehicles including dump trucks, monster trucks, a helicopter, ambulances, and more. The event is free and open to the public.

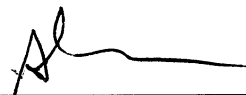
Communications Director Linda McElroy announced A Spring Community Job Fair will take place Tuesday, April 16, 2019 from 10:00 a.m. until 1:00 p.m. at the First Ministry Center located at 220 North Fulton Street. Over 40 employers will be present. Salisbury Transit will provide free rides to and from the Ministry Center on April 16. Free employment information sessions will be held prior to the job fair at the NCWorks Career Center located at 1904 South Main Street on April 11, 2019 at 9:00 a.m. and April 15, 2019 at 2:00 p.m. These sessions will help with resume writing skills and what to expect at a job fair. Salisbury Transit will also provide free transportation to and from NCWorks Career Center for these sessions.

MAYOR COMMENTS

Mayor Heggins thanked everyone for attending the Council meeting, and she thanked staff for its work in the community.

ADJOURNMENT

Motion to adjourn the meeting was made by Mayor Pro Tem Post. All Council members in attendance agreed unanimously to adjourn. The meeting was adjourned at 9:55 p.m.



Al Heggins, Mayor



Diane Gilmore, City Clerk